

No. 10345

IN THE

18  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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FARM PRODUCTS Co., a corporation,

*. Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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BRIEF FOR THE UNITED STATES.

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FILED  
APR 23 1943

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## BRIEF FOR THE UNITED STATES.

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### Statement of Facts.

The Appellant is a California corporation organized in 1942. The sole authority granted by the Corporation Commission of California for the issuance of Appellant's stock provided that said stock was to be placed in escrow. This was done because the Corporation Commission had been advised that one Paul Williams, an ex-convict, was to have received a 50 per cent interest in the corporation. The stock is now in escrow.

Thereafter the Appellee, through one of its agencies, loaned to the Appellant monies to carry on farming operations upon certain lands the corporation had acquired under a lease or leases. At such time as the loan was made there were growing crops upon the land, together

with farming equipment, livestock and buildings. This loan was “supposedly” secured by a chattel mortgage upon the growing crops, farming equipment, livestock and buildings. The Corporation has had no assets at any time except the loan. The acquisition by the Corporation of the above leases was effected solely because of the fact that the Appellee was making the above loan to the Appellant. The Appellant has at no time been able to produce satisfactory evidence that it was, even as a lessee, entitled to most of the buildings and some of the livestock supposedly covered by the mortgage.

Thereafter, on August 17, 1942, the Appellee brought an action against Appellant to foreclose the above mentioned chattel mortgage, and immediately thereafter the Appellant filed its petition under Section 75 of the Bankruptcy Act, and proceedings were stayed in the foreclosure action until the United States District Court had affirmed the ruling of the Conciliation Commissioner dismissing the bankruptcy proceedings and vacating the stay in the foreclosure action. An appeal was noted from this affirmation of the United States District Court, but no stay was granted or supersedeas bond filed.

Judgment was then entered in the foreclosure proceeding, and the property described in the mortgage was ordered sold by the Receiver then in possession. This sale took place, and upon an order to show cause why the sale should not be approved and confirmed the Appellant herein was given due notice in order that it might appear and object to the approval and confirmation of such sale, but Appellant failed to object and the order was duly made and entered, approving such sale and discharging the Receiver.



### Questions Involved.

It is respectfully submitted that the issue, as framed by the Appellant on page 4 of its brief, assumes a fact not in existence, namely: that 50 per cent of the stock is owned by an actual farmer as this statement necessarily refers to the said Paul Williams and cannot be true from a legal standpoint. This because, as explained in Appellant's statement, the Corporation Commission of the State of California would not allow any stock to be issued to Paul Williams, nor do we think the phrase, ". . . and enlisted in the Army to grow food," a proper one and certainly it is not technically correct. It is respectfully submitted therefore that the questions involved are:

1. WHETHER this appeal presents a moot question.
2. WHETHER the Bankruptcy Act, requiring 75 per cent of a California Corporation's stock to be held by an actual farmer, is complied with where the California Corporation Commission has directed that the stock of such corporation be placed in escrow with right of issuance of only 50 per cent thereof and that same 50 per cent to the Corporation's president who is a lawyer with no intention of being responsible for the Corporation's actual farming.

### Statutes Involved.

National Bankruptcy Act, Section 75.

## ARGUMENT.

### POINT I.

#### This Appeal Presents a Question That Has Become Moot.

The Appellant has never had any assets, nor, if the judgment of the District Court should be reversed upon this appeal, would the Appellant be able to set aside the sale under the foreclosure proceedings of the chattel mortgage. There would be no assets for the Bankruptcy Court to exercise jurisdiction over. It is readily perceived from an examination of the authorities passing upon the question whether one is an actual farmer or not, that each and every of such decisions stands upon its own peculiar facts and that a decision of the Appellate Court in the instant case would not even have the attribute of a precedent because of such fact. A decision would have no practical value and we do not believe that Appellant will contend otherwise. Certainly this case does not come within the exceptions delineated by such cases as: *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257; *Panama Refining Co. v. Ryan*, 293 U. S. 388; *Leonard and Leonard v. Earl*, 279 U. S. 392; *McGrain v. Daugherty*, 273 U. S. 135; *Ohio Collieries Co. v. Stuart*, 290 Fed. 1005; *Boise City Irr. & Land Co. v. Clark*, 131 Fed. 415 (CCA 9th Cir.)



## POINT II.

### Intent to Become a Farmer Does Not Per Se Create a Status of Actual Farmer as the Term "Actual Farmer" Is Used in the Bankruptcy Act.

It is respectfully submitted that an attorney, reading the record in this case, is left with the inescapable impression that the activity and connection of Fred Mansur with the Farm Products Company were for the main purpose of increasing his income as an Attorney at Law by the organization of this corporation which would be, he hoped, a remunerative client. The testimony of Fred Mansur shows that he had nothing to do with the planting of crops or actual farm work [Tr. pp. 15, 16]. Mr. Mansur is a well-known attorney in Los Angeles and has been practicing law in this community for a great number of years. He never pretended to do any farming in the State of California, at least until May 6th or 7th, 1942. It is respectfully submitted it was not the intent of Congress that a doctor, lawyer or bootmaker, who overnight might decide to organize a corporation to operate farm lands and become an officer thereof, should be within the definition of "actual farmer", or that one in such class will *ipso factor* become such actual farmer by moving upon the farm lands actually worked by others, not himself, and under the direction and immediate supervision of others. *Shyvers v. Security-First Natl. Bank*, 108 Fed. (2d) 611; *In re Pollack*, 46 Fed. Sup. 358; *Williams v. Great Southern Life Insurance Company*, 124 Fed. (2d) 38 (5th Cir.)

### POINT III.

The Requirement of the Bankruptcy Act for 75 Per Cent Interest of Stock Being Held by an Actual Farmer Does Not Appear to Have Been Complied With by the Farm Products Co.

The record discloses that Fred Mansur concedes that one Paul Williams may perhaps be entitled to fifty per cent of the stock. Whether or not Paul Williams is entitled to the stock is, for the purpose of this proceeding, immaterial as he never had it. The sole basis of the proceedings here must be that Fred Mansur is an actual farmer having 75 per cent of the Appellant's stock or that stockholders of the Farm Products holding 75 per cent of its stock are actual farmers. No other stockholder, as appears from the records of the corporation, had any farming experience. This being the case it is immaterial whether or not Fred Mansur is an actual farmer within the meaning of the Bankruptcy Act, as by his own admission he is not entitled to and does not have the required 75 per cent of the corporation's stock nor, as a matter of fact, has 75 per cent of such stock ever been issued to him nor has he purchased same or any part thereof from any one else.

#### POINT IV.

### A Finding of a Referee in Bankruptcy Confirmed by the District Court if Supported by Substantial Evidence May Not Be Set Aside by the Circuit Court of Appeals.

That the Conciliation Commissioner had substantial evidence upon which to base the finding of fact that Fred Mansur was not a farmer is shown by the admission of Mr. Fred Mansur [Tr. p. 15] as follows:

“The Commissioner asked Fred Mansur how much of his time was spent in the Company’s office between May 7th and August 17th. The answer was four or five days a week.” (The office referred to was the low office of Mr. Mansur.)

It is respectfully submitted that the Commissioner could not have had more substantial evidence before him than the admission of Mansur as above quoted. When this admission is read in connection with the statements that appear on page 14 of the transcript of record it is very obvious that Mr. Mansur was not and is not a farmer and had no intention of learning anything about actual farming in so far as that pertained to the planting, growing and harvesting of crops. The only facts in the record showing that Mr. Mansur knows anything about a farm is that he lived on a farm in New Hampshire up to the age of twenty years, which period most of his time must have been spent at school though this latter fact does not appear in the record. *Bee Dee Management Co. v. Kenyon*, 122 Fed. (2d) 299 (10 Cir.)

The most that can be said on behalf of Appellant was that the record that was before the court shows that a disputed question of fact has been raised as to whether Mansur was an actual farmer, and it is respectfully submitted that this court should affirm the findings of fact made by the Conciliation Commissioner where there is testimony or evidence upon which said findings could be based, more especially so where, as in this case, there is a conflict of testimony.

### Conclusion.

WHEREFORE it is respectfully submitted that this appeal be dismissed or that judgment of the U. S. District Court herein affirming the order of the Conciliation Commissioner dismissing the proceedings in Bankruptcy and vacating the stay of the case of the United States of America, Plaintiff, v. Farm Products Co., a corporation, Defendant, be in all respects affirmed.

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